

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL S. MAPES, MILTON
PETERSEN IV, BRIAN LEICHNER,
DAVID MOHR and DAVID STADING,

Plaintiffs,

v.

WELLINGTON CAPITAL GROUP, INC.,

Defendant.

Civil No. 8:07cv77

**INDEX OF EVIDENCE
IN SUPPORT OF
WELLINGTON'S MOTION FOR
PROTECTIVE ORDER**

Defendant, Wellington Capital Group, Inc., hereby submits the following evidence in support of its Motion for Protective Order:

1. Affidavit of Robert A. Mooney, with exhibit attached hereto.

Dated this 25th day of March, 2008.

WELLINGTON CAPITAL GROUP, INC.,
Defendant

By /s/Robert A. Mooney
Michael J. Mooney, #12886
Robert A. Mooney #21304
Elizabeth M. Callaghan, #22238
GROSS & WELCH, P.C., L.L.O.
2120 South 72nd Street, Suite 1500
Omaha, Nebraska 68124
402-392-1500
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of March, 2008, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system which sent notification of such filing upon all parties who filed an appearance or motion by electronic filing in this case:

John P. Passarelli
James M. Sulentic
1650 Farnam Street
Omaha, NE 68102
john.passarelli@kutakrock.com
james.sulentic@kutakrock.com

/s/Robert A. Mooney

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**AFFIDAVIT OF
ROBERT A. MOONEY**

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

COMES NOW the Affiant, Robert A. Mooney, and hereby states and alleges as follows:

1. I am an attorney licensed to practice law in the state of Nebraska and in the United States District Court for the District of Nebraska, and I am one of the attorneys of record for Defendant Wellington Capital Group, Inc. in the above-captioned case.
2. The matters stated in this Affidavit are based upon my personal knowledge.
3. On March 5, 2008, I had a telephone conference with John Pasarelli, counsel for the Plaintiffs. During that telephone call, I informed Mr. Pasarelli that I received the Notice to Take Deposition he filed in this case seeking to take the deposition of Frank Amodeo at my office in Omaha, Nebraska on March 26, 2008. During this conversation, I informed him that March 26, 2008 would not work for any of the three attorneys of record from Gross & Welch, as Mike Mooney, Sr. and I will be out of the office traveling that day. Elizabeth Callaghan is scheduled for

depositions in another case set for trial before this Court, beginning the last week of March. During this same conversation, I proposed a different date for Mr. Amodeo to be deposed in Florida at my client's expense.

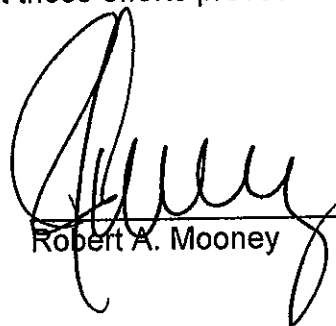
Also during this conversation, I informed Mr. Pasarelli of our intention to file a motion to stay enforcement of Magistrate Thalken's Order (Filing 48) should we be unable to reach an accommodation regarding scheduling of Mr. Amodeo's deposition.

During this telephone conversation, Mr. Pasarelli responded that he would talk to his client about our proposed accommodation and contact me with his thoughts.

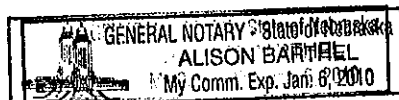
4. Attached hereto and marked as Exhibit "A" is a true and correct copy of an email that I received from John Pasarelli dated March 6, 2008. Mr. Pasarelli rejected our efforts to reschedule the March 26, 2008 deposition, despite my request for a professional accommodation given counsels' conflicts.


By way of follow up, I attempted to have a further telephonic conversation with Mr. Pasarelli on March 25, 2008, but those efforts proved unsuccessful.

Further, your Affiant sayeth not.


Robert A. Mooney

SUBSCRIBED AND SWORN to before me this 25th day of March, 2008.




Notary Public

-----Original Message-----

From: Passarelli, John P. [mailto:John.Passarelli@KutakRock.com]

Sent: Thursday, March 06, 2008 10:07 AM

To: Mooney, Robert

Cc: Sulentic, James M.

Subject: Mapes et. Al. v. Wellington

> Bob, I have had an opportunity to discuss your proposal with my
> clients. After considering all of our legal options, we have
> concluded that we must insist on deposing Mr. Amadeo on March 26 at
> your offices.
>
> We realize you have the right to appeal Judge Thalken's Order. We
> believe Judge Bataillon will affirm Judge Thalken's Order. Indeed,
> if
> Wellington appeals, we will ask for an expedited decision from Judge
> Bataillon in an attempt to hold firm the March 26 date. We will also
> ask Judge Bataillon to modify and strengthen the sanctions. Under
> the
> circumstances of this case, it is our belief that Judge Bataillon
> will
> be outraged by Mr. Amadeo's delay tactics with respect to his
> deposition. Accordingly, we are proceeding on the basis that the
> deposition will be conducted at your offices on March 26 absent a
> court order to the contrary.
>
> On the settlement front, we do believe this is a good opportunity to
> settle this case. We are quite aware of all of the other pending
> litigation and the ongoing criminal investigation and appreciate that
> it would be in Mr. Amadeo's best interest to resolve this Nebraska
> dispute now. Our clients would be willing to resolve this dispute on
> the following terms:
>
> 1. The counterclaims would be dismissed with prejudice;
>
> 2. The parties would stipulate to a judgment pursuant to which
> Wellington acknowledges our clients' ownership of the capital stock
> of
> the Alliance Companies; and
>
> 3. The parties shall be responsible for their respective attorneys'
> fees and costs of litigation.
>
> We look forward to your client's response to the foregoing settlement
> proposal.
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REFERRED TO IN THE PROMOTING, MARKETING OR RECOMMENDING OF ANY ENTITY,
INVESTMENT PLAN OR ARRANGEMENT, AND SUCH ADVICE IS NOT INTENDED OR

EXHIBIT

A

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OF AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE.

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Thank you.

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